

REMARKS

The Office Action dated March 7, 2005, and made final, has been carefully reviewed and the foregoing amendments have been made as a consequence thereof.

Claims 1-23 are now pending in this application. Claims 1-23 stand rejected. Claims 4, 5, and 7 are objected to.

The objection to Claims 4, 5, and 7 is respectfully traversed.

Regarding Claim 4, an amendment was filed on December 8, 2004 which included amendments to Claim 4 changing "said lower compartment" to --said third compartment--. Thus it is believed that no further correction of Claim 4 is required.

Claim 5 has been amended to depend from Claim 2 as suggested by the Examiner. Claim 6 has also been amended to depend from Claim 2 which provides proper antecedent basis for Claim 7.

For the reasons set forth above, Applicant respectfully requests that the objection to Claims 4, 5, and 7 be withdrawn.

The rejection of Claims 1, 2 and 6 under 35 U.S.C. 102 (b) as being anticipated by Wallenbrock et al. (U.S. Patent 3,232,071) is respectfully traversed.

Wallenbrock et al. describe a refrigerator (10) having an upper cabinet (11) and a lower cabinet (12). The upper cabinet defines a refrigeration chamber (13). A wall (14) extends across the refrigeration chamber to define a lower chamber (15) adjacent a bottom wall (40) of the upper cabinet that has a left hand portion (16) and a right hand portion (17). Pans (18) and (19) are disposed in the left and right hand portions, respectively. The lower cabinet is divided by an upright wall (20) to define a left hand freezer chamber (21) and a right hand refrigeration

chamber (22). Air from an evaporator (24) is delivered through a first duct (29) to the refrigeration chamber and through a second duct (30) to the freezer chamber. An outlet (61) in the duct leads to a metered outlet (61a) that admits air into the chamber portion (16). A manually operated damper (62) controls the metered outlet to adjust the temperature in the chamber portion from slightly below freezing to slightly above freezing so that the pan may be used as either a meat pan or a crisper.

Claim 1 recites a refrigerator including “a refrigeration compartment; a freezer compartment adjacent said refrigeration compartment; a dividing wall defining a third compartment adjacent said freezer compartment and separated from said refrigeration compartment and freezer compartment by said dividing wall, said third compartment controllable in both a refrigeration mode and a freezer mode; and a duct extending through said dividing wall from a top surface of said dividing wall to a bottom surface of said dividing wall and delivering air from said freezer compartment to said third compartment, and wherein said duct is open to said freezer compartment at one of said top and bottom surfaces”.

Wallenbrock et al. do not describe or suggest a refrigerator as recited in Claim 1. More specifically, Wallenbrock et al. do not describe or suggest a dividing wall defining a third compartment and a duct extending through the dividing wall from a top surface to a bottom surface of the dividing wall and delivering air from the freezer compartment to the third compartment, and wherein the duct is open to the freezer compartment at one of the top and bottom surfaces. Rather, Wallenbrock et al describe a refrigerator having a compartment adjacent a bottom wall of an upper cabinet wherein cool air enters the compartment through a metered outlet from a duct that is not open to the freezer compartment at either the top or bottom surfaces of the wall. Accordingly, for the reasons set forth above, Claim 1 is submitted to be patentable over Wallenbrock et al.

Claims 2 and 6 depend from the independent Claim 1. When the recitations of Claims 2 and 6 are considered in combination with the recitations of Claim 1, Applicant submits that dependent Claims 2 and 6 likewise are patentable over Wallenbrock et al.

For at least the reasons set forth above, Applicant respectfully requests that the §102 rejection of Claims 1, 2 and 6 be withdrawn.

The rejection of Claims 3, 4, 5, and 7 under 35 U.S.C. 103(a) as being unpatentable over Wallenbrock et al. in view of Peterson et al. (U.S. Patent No. 5,758,512) is respectfully traversed.

Wallenbrock et al. is described above. Peterson et al. describe a refrigerator (20) having a middle fresh food compartment (30) and a bottom freezer compartment (34) arranged below the fresh food compartment and a small freezer compartment (26) arranged above the fresh food compartment. Cool air can be directed to the compartments of the refrigerator by use of a baffle assembly (96) which includes a main rotary damper (102) which can be positioned to provide proportional amounts of chilled air to the three separate compartments based on the degree of cooling required.

Applicant respectfully submits that the Section 103 rejection of the presently pending claims is not a proper rejection. Obviousness cannot be established by merely suggesting that it would have been obvious to one of ordinary skill in the art to modify Wallenbrock in view of Peterson. More specifically, as is well established, obviousness cannot be established by combining the teachings of the cited art to produce the claimed invention, absent some teaching, suggestion, or incentive supporting the combination. Neither Wallenbrock nor Peterson, considered alone or in combination, describe or suggest the claimed combination. Furthermore, in contrast to the assertion within the Office Action, Applicant respectfully submits that it would not be obvious to one skilled in the art to combine Wallenbrock with Peterson because there is

no motivation to do so. In addition, the Examiner has not pointed to any prior art that teaches or suggests to combine the disclosures, other than Applicant's own teaching.

More specifically, it is respectfully submitted that a prima facie case of obviousness has not been established. As explained by the Federal Circuit, "to establish obviousness based on a combination of the elements disclosed in the prior art, there must be some motivation, suggestion or teaching of the desirability of making the specific combination that was made by the applicant." *In re Kotzab*, 54 USPQ2d 1308, 1316 (Fed. Cir. 2000). MPEP 2143.01.

Moreover, the Federal Circuit has determined that:

[I]t is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the prior art so that the claimed invention is rendered obvious. This court has previously stated that "[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention."

In re Fitch, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992). Further, under Section 103, "it is impermissible...to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art." *In re Wesslau*, 147 USPQ 391, 393 (CCPA 1965). Rather, there must be some suggestion, outside of Applicant's disclosure, in the prior art to combine such references, and a reasonable expectation of success must be both found in the prior art, and not based on Applicant's disclosure. *In re Vaeck*, 20 U.S.P.Q.2d 1436 (Fed. Cir. 1991).

The Office Action suggests that the addition of an evaporator fan, a secondary fan and a drawer as taught by Peterson would improve the accessibility of the refrigerator. However, Wallenbrock is not lacking in these features. Wallenbrock has an evaporator fan (27), the third compartment has drawers (53) and (54) and airflow into the compartment is through a metered duct outlet. Further, the suggested additions to Wallenbrock would require a significant redesign

of the Wallenbrock refrigerator. Since there is no teaching or suggestion in the cited art for the asserted modification, the Section 103 rejection appears to be based on a hindsight reconstruction in which isolated disclosures have been picked and chosen in an attempt to deprecate the present invention. Of course, this is impermissible, and for this reason alone, Applicant requests that the Section 103 rejection of Claims 3, 4, 5, and 7 be withdrawn.

Nevertheless, Claims 3, 4, 5, and 7 depend from Claim 1, which recites a refrigerator including "a refrigeration compartment; a freezer compartment adjacent said refrigeration compartment; a dividing wall defining a third compartment adjacent said freezer compartment and separated from said refrigeration compartment and freezer compartment by said dividing wall, said third compartment controllable in both a refrigeration mode and a freezer mode; and a duct extending through said dividing wall from a top surface of said dividing wall to a bottom surface of said dividing wall and delivering air from said freezer compartment to said third compartment, and wherein said duct is open to said freezer compartment at one of said top and bottom surfaces".

Neither Wallenbrock et al. nor Peterson et al., considered alone or in combination, describe or suggest a refrigerator as recited in Claim 1. More specifically, neither Wallenbrock et al. nor Peterson et al., considered alone or in combination, describe or suggest a dividing wall defining a third compartment and a duct extending through the dividing wall from a top surface to a bottom surface of the dividing wall and delivering air from the freezer compartment to the third compartment, and wherein the duct is open to the freezer compartment at one of the top and bottom surfaces. Rather, Wallenbrock et al describe a refrigerator having a compartment adjacent a bottom wall of an upper cabinet wherein cool air enters the compartment through a metered outlet from a duct that is not open to the freezer compartment at either the top or bottom surfaces of the wall and Peterson et al. describe a refrigerator wherein a fresh food compartment is disposed between the freezer compartment and the third compartment such that the dividing

wall has no surface open to the freezer compartment. Accordingly, for the reasons set forth above, Claim 1 is submitted to be patentable over Wallenbrock et al. in view of Peterson et al.

Claims 3, 4, 5, and 7 depend from the independent Claim 1. When the recitations of Claims 3, 4, 5, and 7 are considered in combination with the recitations of Claim 1, Applicant submits that dependent Claims 3, 4, 5, and 7 likewise are patentable over Wallenbrock et al. in view of Peterson et al.

For at least the reasons set forth above, Applicant respectfully requests that the §103 rejection of Claims 3, 4, 5, and 7 be withdrawn.

The rejection of Claims 8-23 under 35 U.S.C. 103(a) as being unpatentable over Lee (U.S. Patent No. 5,551,252) in view of Peterson et al. (U.S. Patent No. 5,758,512) is respectfully traversed.

Peterson et al. is described above. Lee describes a refrigerator including a refrigeration compartment (16), an individual compartment (20), a freezer compartment (15) and a vegetable compartment (32). A first wall (40) is formed between the refrigeration compartment and the freezing compartment and a second wall (30) is formed between the freezing compartment and the vegetable compartment. A rear wall (15W) of the freezing compartment includes a heat exchanging compartment (H) including an evaporator (17) and fan (18). A main duct (50) extends vertically through the first wall and delivers air to the various compartments. A main damper (51) is mounted in an upper portion of the main duct to control the flow of cool air from the heat-exchanging compartment into the refrigerating compartment. Individual dampers (52,53) control the flow of cool air from the heat-exchanging compartment into respective chambers (21,23). A cool air passage (70) in the second wall returns air from the freezing and vegetable compartments to the evaporator. Openings (61) and (67) on the freezing compartment side of the second wall along with opening (65) on the vegetable compartment side of the second

wall all admit air from the respective compartments into the cool air passage for delivery to the evaporator.

Claim 8 recites a refrigerator including "an upper compartment including an evaporator and a fan therein, said evaporator and said fan enclosed by an evaporator cover having an inlet and an outlet; a dividing wall defining a lower compartment separated from said upper compartment by said dividing wall; a duct extending through said dividing wall from a top surface of said dividing wall to a bottom surface of said dividing wall and delivering air from said upper compartment to said lower compartment, and wherein said duct is open to said upper compartment at said top surface, said duct having a damper disposed therein for opening and closing said duct, said duct having a duct fan disposed therein; and a supply conduit having a first end and a second end, said first end coupled to said evaporator cover, and said second end coupled to said duct such that said supply conduit provides flow communication from said evaporator to said duct".

Neither Lee nor Peterson et al., considered alone or in combination, describe or suggest a refrigerator as recited in Claim 8. More specifically, neither Lee nor Peterson et al., considered alone or in combination, describe or suggest a dividing wall defining a lower compartment and a duct extending through the dividing wall from a top surface to a bottom surface of the dividing wall and delivering air from the upper compartment to the lower compartment, and wherein the duct is open to the upper compartment at the top surface. Rather, Lee describes a refrigerator having a dividing wall having openings at the top and bottom surfaces that take in air from both the upper and lower compartments for delivery to an evaporator. Peterson et al. describe a refrigerator wherein a fresh food compartment is disposed between the upper compartment and the lower compartment such that the dividing wall has no surface open to the upper compartment. Therefore no air is delivered from the upper compartment to the lower compartment through a duct open to the upper compartment at the top surface of the dividing

wall. Accordingly, for the reasons set forth above, Claim 8 is submitted to be patentable over Lee in view of Peterson et al.

Claims 9-14 depend from independent Claim 8. When the recitations of Claims 9-14 are considered in combination with the recitations of Claim 8, Applicant submits that dependent Claims 9-14 likewise are patentable over Lee in view of Peterson et al.

Claim 15 recites a refrigerator compartment including "an upper compartment...a dividing wall defining a lower compartment separated from said upper compartment by said dividing wall, said dividing wall having a top surface and a bottom surface;...a second duct extending through said dividing wall providing an opening from said top surface to said bottom surface and delivering air from said upper compartment to said lower compartment, said second duct being open to said upper compartment at said top surface...".

Neither Lee nor Peterson et al., considered alone or in combination, describe or suggest a refrigerator compartment as recited in Claim 15. More specifically, neither Lee nor Peterson et al., considered alone or in combination, describe or suggest a dividing wall defining a lower compartment and having top and bottom surfaces, and a second duct extending through the dividing wall providing an opening from the top surface to the bottom surface and delivering air from the upper compartment to the lower compartment, and wherein the second duct is open to the upper compartment at the top surface. Rather, Lee describes a refrigerator having a dividing wall having openings at the top and bottom surfaces that take in air from both the upper and lower compartments for delivery to an evaporator. Peterson et al. describe a refrigerator wherein a fresh food compartment is disposed between the upper compartment and the lower compartment such that the dividing wall has no surface open to the upper compartment. Therefore no air is delivered from the upper compartment to the lower compartment through a duct open to the upper compartment at the top surface of the dividing wall. Accordingly, for the

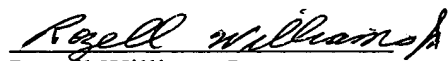
reasons set forth above, Claim 15 is submitted to be patentable over Lee in view of Peterson et al.

Claims 16-23 depend from independent Claim 15. When the recitations of Claims 16-23 are considered in combination with the recitations of Claim 15, Applicant submits that dependent Claims 16-23 likewise are patentable over Lee in view of Peterson et al.

For at least the reasons set forth above, Applicant respectfully requests that the §103 rejection of Claims 8-23 be withdrawn.

In view of the foregoing amendments and remarks, all the claims now active in this application are believed to be in condition for allowance. Reconsideration and favorable action is respectfully solicited.

Respectfully Submitted,



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